IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 96 OF 2004

IN

SUMMARY SUIT NO. 3228 OF 2003

M/s.Hardik Enterprises .. Plaintiff

versus

Jog Engineering Ltd. .. Defendant

...

Ms.Shilpa Jain for the plaintiff.

Mr.Ashish Kamat i/b Crawford Bailey & Co. for the defendant

CORAM : D.G. KARNIK,J.

DATED : 7th February 2005.

P.C.:

1. The learned counsel for the plaintiff states that the Summons for Judgement was served on the defendants on 9th February 2004. The learned counsel

for the defendant admits receipt of the Summons for Judgement but prays for adjournment. Request rejected for the reasons mentioned below.

2. Summons for Judgement was served on the defendant several months ago. On a grievance made by the defendant's counsel that the copy was incomplete(this is denied by the plaintiffs) a fresh copy of the plaint was re-served on the defendant's Advocate in the Court on 19th January. Even assuming the date of service to be 19th January 2005, still a period of more than 10 days has passed and the defendant has neither filed an application for leave to defend. I am satisfied that the deffendant is simply adopting dialatary tacticks.

3. The plaintiff through its counsel gives up the claim for interest prior to the date of institution of the suit.

4. The plaintiff has field this suit for recovery of bills for the supply of machinery. By a letter dated 27th May 2002, the plaintiff demanded the payment of the outstanding dues by reply dated 6th June 2002. In reply, the defendant stated that its

Andheri fly over project had faced a Public Interest Litigation for three years which had been solved very recently; he could not make the payment because of the said project suffering the litigation. The defendant further stated that the bills for the project which were pending with the Government for payment would be cleared shortly and the defendant would clear the plaintiff's dues shortly. In the reply dated 6th June 2002, the defendant has stated as follows:-

> "You are aware that our Andheri Flyover Project faced a Public Interest Litigation for nearly 3 years which has only been resolved very recently. While the Flyover has been completed and handed over to the Government, even on this project our bills are pending for payment with Government of Maharashtra. We expect that they will be cleared shortly. Till such time, our bills are realized we would request you to kindly bear with us for some more time. We would like to assure you of our commitment to clear of your dues, no sooner such issues are resolved."

5. In view of the clear admission of liability by the defendant, I see no reason to grant any further adjournment to the defendant as requested by his learned counsel and I proceed to pass a decree under clause (a) of sub rule (6) of Rule 3 of Order

37 of the Code of Civil procedure as follows:-

6. Summons for Judgement is made absolute and the suit of the plaintiff is decreed as follows:-

7. The defendant shall pay to the plaintiff a sum of Rs.3,07,481/- (i.e. the principal sum claimed in the suit) together with interest @ 9% p.a. from the date of the suit till payment and all costs of the suit.

8. At the request of the learned counsel for the defendant, execution of the decree is stayed for a period of two weeks.

D.G. KARNIK, J